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Attorney for Defendant  
Micheal Breese

4  
5 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
6 DALLAS DIVISION

7  
8 CAN CAPITAL ASSET SERVICING,  
INC., F/K/A NEWLOGIC BUSINESS  
9 LOANS, INC.,

10 Plaintiff,

11 vs.

12 HOMESTAR FIELD SERVICES, LLC, A  
13 FOREIGN LIMITED LIABILITY  
14 COMPANY, DBA HOMESTAR FIELD  
15 SERVICES AND MICHEAL BREESE  
16 A/K/A MICHEAL JOSEPH BREESE,  
INDIVIDUALLY,

17 Defendants

Case Number: 19-cv-00992-L

DEFENDANT MICHEAL BREESE'S  
MOTION TO DISMISS FOR  
IMPROPER VENUE OR  
ALTERNATIVELY MOTION TO  
TRANSFER

18 TO THE HONORABLE COURT:

19  
20 Defendant Micheal Breese moves to dismiss this suit for improper venue as  
21 follows:

- 22 1. This motion is brought pursuant to Fed. R. Civ. P. 12(b)(3) and  
23 alternatively pursuant to 28 U.S.C. § 1404(a).  
24  
25 2. Venue of this suit does not satisfy the requirements of 28 U.S.C. § 1391(b)  
26 and is improper in this judicial district because:  
27  
28

- a) The individual Defendant, Micheal Breese, is a resident and citizen of the State of Minnesota and were so at the time of the filing of his suit.
  - b) Defendant Homestar Field Services LLC is organized under the laws of Delaware, is not qualified to do business in the State of Texas and has no property or property rights in the State of Texas.
  - c) No defendant is subject to this Court's personal jurisdiction.
  - d) No material event or omission by any defendant regarding the Business Loan Agreement, which is the basis of this suit, occurred in the State of Texas. All material events and omissions took place in the State of Utah and the State of Minnesota. More specifically:
    - i. The parties in the agreement agreed that the validity of the agreement was dependent upon the receipt and acceptance by and the signature of Lender in the State of Utah.
    - ii. The parties to the agreement agreed that all "credit and other decisions" were made by Lender in the State of Utah
    - iii. Defendant Homestar Field Services LLC's repayment performance of the agreement took place in the State of Minnesota by Account Clearing House ("ACH") transfers from Defendant's bank located in Minneapolis, Minnesota.
  - e) Defendant Homestar Field Services, L.L.C. has no property or property rights in the State of Texas. Whatever may constitute collateral securing the loan is in the State of Minnesota.
3. This Court should dismiss this suit pursuant to Fed. R. Civ. P. 12(b)(3).
  4. Alternatively, the Business Loan Agreement contains a forum-selection clause generally providing that the venue for the resolution of disputes of

1 any nature shall be in the state or federal courts of the State of Utah. In  
2 the absence of this court dismissing the suit, pursuant to Fed. R. Civ. P.  
3 12(b)(3) pursuant to 28 U.S.C. § 1404(a) this court must transfer the suit  
4 to the United States District Court for the District of Utah.  
5

6 5. The Affidavit of Defendant Micheal Breese in support of this motion is  
7 attached as Exhibit "A."

8  
9 6. A true and correct copy of the notice of forfeiture by Secretary of State of  
10 Texas of Defendant Homestar Field Services LLC on 28 July 2017 is  
11 attached as Exhibit "B."

12 WHEREFORE PREMISES CONSIDERED, Defendant Micheal Breese prays  
13 the sufficiency of his motion and that the relief sought herein be granted as follows:  
14

15 (1) The case should be dismissed.

16 (2) Alternatively, this court should transfer the case to the United States  
17 District Court for the District of Utah.  
18

19  
20 /s/ Dale Ossip Johnson

21 Dale Ossip Johnson  
22 Tex. SBN: 10700000  
23  
24

25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on 20 September 2019 I electronically filed the foregoing  
27 document by using the CM/ECF system. I certify that the following parties or their  
28 counsel of record are registered as ECF Filers and that they will be served by the  
CM/ECF system:

**Plaintiff:**

Can Capital Asset Servicing, Inc. f/k/a  
New Logic Business Loans, Inc.

M. H. Ceronsky, Esq.  
Ceronsky, Rosen & Garcia, P.C.  
1770 St. James place, Suite 150  
Houston, Texas 77056

Attorneys for Plaintiff

/s/ Dale Ossip Johnson

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Dale Ossip Johnson

## EXHIBIT "A"



Dale Ossip Johnson, Esq.  
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Micheal Breese

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CAN CAPITAL ASSET SERVICING,  
INC., F/K/A NEWLOGIC BUSINESS  
LOANS, INC.,

Plaintiff,

vs.

HOMESTAR FIELD SERVICES, LLC, A  
FOREIGN LIMITED LIABILITY  
COMPANY, DBA HOMESTAR FIELD  
SERVICES AND MICHEAL BREESE  
A/K/A MICHEAL JOSEPH BREESE,  
INDIVIDUALLY,

Defendants

Case Number: 19-cv-00992-L

AFFIDAVIT OF MICHEAL BREESE IN  
SUPPORT OF DEFENDANT MICHEAL  
BREESE'S MOTION TO DISMISS FOR  
IMPROPER VENUE OR  
ALTERNATIVELY MOTION TO  
TRANSFER.

"My name is Micheal Breese." I am a Defendant in the above entitled and numbered case. I am over the age of eighteen years and fully competent to make and give this affidavit. I have personal knowledge of all facts stated herein unless expressly stated otherwise."

"I am a resident and citizen of the State of Minnesota and were such at the time of the filing of this suit."

"Defendant Homestar Field Services LLC is a Delaware limited liability company. It is not qualified to do business in the State of Texas and otherwise does not have an office or actual presence in the State of Texas."

"At all times material to the Business Loan Agreement, upon which Plaintiff predicates its suit, the business bank account of Defendant Homestar Field Services LLC was in Minneapolis, Minnesota. Plaintiff processed an Automated


1 Clearing House (ACH) form to Defendant Homestar Field Services LLC's bank and  
2 collected all installment payments on the loan from Defendant Homestar Field  
3 Services LLC's bank account."

4 "Homestar Field Services, LLC has no property, property rights or  
5 documents constituting collateral securing the Business Loan Agreement, which is  
6 the subject of the pending suit, in the State of Texas. What remains of collateral, if  
7 any, is in the State of Minnesota."

8 **TEX. CIV. PRACT. & REM. CODE § 132.001(d) DECLARATION**

9 "My name is Michael Breese. My date of birth is 7 November 1981. My  
10 address is 10460 Vermillion Circle, NE, Blain, Minnesota 55449. I declare under  
11 penalty of perjury I have read the foregoing Affidavit, and the facts contained  
12 therein are true and correct."

13 Executed in Hennipen County, State of Minnesota on the 19th day of  
14 September, 2019.

15   
16 Micheal Breese  
17 Affiant/Declarant  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## EXHIBIT "B"



Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Rolando B. Pablos  
Secretary of State

**Forfeiture pursuant to Section 171.309 of the Texas Tax Code  
of  
HomeStar Field Services, LLC**

File Number : 802101912

Certificate / Charter forfeited : July 28, 2017

The Secretary of State finds that:

1. The Secretary has received certification from the Comptroller of Public Accounts under Section 171.302 of the Texas Tax Code indicating that there are grounds for the forfeiture of the taxable entity's charter, certificate or registration; and
2. The Comptroller of Public Accounts has determined that the taxable entity has not revived its forfeited privileges within 120 days after the date that the privileges were forfeited.

Therefore, pursuant to Section 171.309 of the Texas Tax Code, the Secretary of State hereby forfeits the charter, certificate or registration of the taxable entity as of the date noted above and records this notice of forfeiture in the permanent files and records of the entity.



A handwritten signature in black ink, appearing to read "RBP", positioned above the printed name of the Secretary of State.

Rolando B. Pablos  
Secretary of State

Come visit us on the Internet @<http://www.sos.state.tx.us/>

(512) 463-5555

FAX (512) 463-5709

TTY 7-1-1